CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 20674 of 2021

[Arising out of Order-in-Original No. BLR-CUSTM-CTY-COM-06-21-22 dated 30.06.2021 passed by the Commissioner of Customs, Bangalore]

Container Corporation of India Ltd.
Under the Ministry of Railways
Inland Container Depot
Whitefield, Bengaluru-560 065 **....Appellant**

VERSUS

Commissioner of Customs
Bangalore
Post Box No. 5400,
C.R. Buildings, Queens Road
Bangalore-560 001 **....Respondent**

Appearance:

Mr. Pradyumna G.H., Advocate for the Appellant
Mr. Rajesh Shastry, AR for the Respondent

Coram:

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No.: 20640 / 2024

Date of Hearing:12.04.2024
Date of Decision: 09.08.2024

Per: Pullela Nageswara Rao

M/s. Container Corporation of India Ltd., the appellant was appointed as custodian of Inland Container Depot (ICD), at Whitefield, Bangalore, as per the provisions of Section 45 of the Customs Act, 1962

read with Handling of Cargo in Customs Area Regulations, 2009 (HCCAR).

2. The brief facts of the case are the custodianship of the appellant was due for renewal on 31.03.2020, on application of tax ordinance issued in the wake of Covid-19 Pandemic, the due date was deferred to 31.12.2020. In the meantime, Central Board of Indirect Taxes (CBIC) vide Circular No. 44/2020 dated 08.10.2020 had mandated annual inspection of ICDs/CFSs and such inspection to be completed by 30.12.2020. The inspection/audit of the appellant was conducted in the month of December 2020 and a report was furnished by the Audit and Inspection Cell of the Customs Commissionerate, Bangalore.

3. As per the Audit report, certain deficiencies were found in the functioning of the ICD, which are as below:-

a) The notified area of ICD is not secured by separate boundaries, and the area should be sterile and inaccessible from other areas of the operations of the appellant.

b) The security personnel were not monitoring entry and exit of the persons into the notified area and they need to be trained to control the movement of cargo as well as personnel with authorized documents only.

c) They have taken a comprehensive insurance through their corporate office at New Delhi and terms of such insurance were not known to the appellant and have not furnished full copy of the insurance policy.

d) There was no proper layout or plan of notified area of ICD, hence the notified area could not be identified separately and there is a need to undertake proper survey of the notified area.

e) Several letters were addressed to the custodian by the Joint Commissioner for non-provision of sufficient furniture, infrastructure, connectivity etc. However, out of the fifteen issues raised, only five issues were attended.

f) The no parking and regulatory parking space were not earmarked and there is no security in the parking area and the vehicles were parked as per the choice of the truck drivers and the cab drivers.

g) Disposal of Section 48 Cargo was tardy and less than 10% of Section 48 goods have been put for auction for the last three years and only three lots have been reportedly sold.

h) Containers containing seized goods as well as Section 48 goods were pending clearance and no serious efforts were put in to clear the containers and dispose the cargo. Seized cargo was not handed over to Customs Disposal Unit for disposal.

4. In view of the above, discrepancies/non-adherence of/to the provisions of HCCAR, the appellants were issued a show-cause notice and called upon as to why:-

> *(i) The request of renewal of custodianship granted under Section 45 of the Act read with Regulation 30 of HCCAR, 2009 should not be rejected;*
>
> *(ii) the custodianship/approval as CCSP under Section 45 read with HCCAR, 2009 should not be revoked under Regulation 11 read with Regulation 12 of HCCAR, 2009.*

5. The Commissioner of Customs adjudicated the show-cause notice holding that the appellants have not adhered of certain provisions of HCCAR, 2009. The proposal to revoke the custodianship was dropped,

however the renewal of custodianship was extended for a period of 6(six) months, only. The learned Commissioner held that the custodians have otherwise contravened the provisions of HCCAR, 2009 and rendered themselves liable for penalty under Regulation 12(8) of HCCAR, 2009 and penalty under Section 117 of the Customs Act, 1962 and has imposed a penalty of Rs. 50,000/- under Regulation 12(8) of HCCAR, 2009 and a penalty of Rs. 4,00,000/- under Section 117 of the Customs Act, 1962 on the appellant.

6. The appellant in the grounds of appeal has contended that: they have explained that none of the breaches or contraventions cited by the Department were serious and as a responsible custodian, they have taken remedial action and corrective steps; the delay in taking action in certain areas was due to non-availability of labour during the Covid-19 pandemic; the Commissioner without considering the submissions has held them liable to penalty of Rs, 50,000/- under Regulation 12(8) of HCCAR, 2009 and Rs. 4,00,000/- under Section 117 of the Customs Act, 1962; a penalty extending up to Rs. 50,000/- is imposable under Regulation 12(8) of HCCAR, if the Customs Cargo Service Provider (CCSP) contravenes any provisions of the HCCAR or abets such contravention or who fails to comply with any provisions of the Regulation; the findings of the Commissioner with regard to breaches, if any, were venial in nature and cannot be equated to contravention of the statutory provisions so as to warrant imposition of penalty under Rule 12(8) of HCCAR; the imposition of penalty under Section 117 of the Customs Act is devoid of any cogent finding to justify the penalty; a penalty not exceeding Rs. 4,00,000/- under Section 117 of the Act is imposable on the person, who contravenes any provisions of the

Customs Act or abets any such contravention or who fails to comply with any provisions of the Customs Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding four lakhs rupees; the Commissioner held that they failed to comply with the provisions of HCCAR, hence, they are liable for penal action for violation of Section 45 read with Section 7 and 8 of Customs Act, 1962; it is difficult to understand how the Sections 7 and 8 of the Customs Act are relevant in the present case; further it is obvious that as per Section 45, the person in-charge with the custody of the goods shall keep proper account of the imported goods and ensure removal only with the permission of the proper officer and to prevent pilferage; there are no findings that the alleged laxity on their part had resulted in non-accountal of the goods and the goods had been removed from the notified area without permission of the proper officer or there were pilferage of the goods; merely because the Department entertains the view that they have failed to adhere to a few restrictions, the provisions of Section 45 could not have been invoked; they have mentioned in the proceedings before the Inquiry Officer and before the Commissioner that there was laxity in complying with the statutory regulations; further they were awarded the Samman Patra by the Customs for their outstanding performance as a custodian in Bangalore Customs Zone, which bears testimony to their performance.

7. The appellants have relied on the following decisions of the Tribunal:

a. Sardana Enterprises Vs. Commissioner of Customs, New Delhi – 2018 (361) E.L.T. 1025 (Tri.-Del.)

b. Maersk India Pvt. Ltd. Vs. Commr. of Cus. (Import), Nhava Sheva – 2018 (362) E.L.T. 181 (Tri.-Mumbai)

c. Central Warehousing Corporation Vs. Commr. of Cus., Bangalore – 2012 (283) E.L.T. 567 (Tri.-Bang.)

wherein the penalty imposed under Section 117 was held to be not imposable and in the case of **Central Warehousing Corporation**, the penalty is imposable even in the absence of *mens rea* and hence, penalty of Rs. 1,00,000/- was reduced to Rs. 1,000/-.

8. The learned AR for the Revenue has submitted that the appellant has violated the provisions of HCCAR, 2009 and that the violations are grave enough and detrimental to Revenue's interest and also the custodian has acted in a sheer lackadaisical manner in conforming to the Regulations, especially insurance of cargo and demarcation of Customs Notified Area.The learned AR for the Revenue has averred that the custodian has contravened the provisions of HCCAR, 2009 read with Section 45 of Customs Act, 1962, which reads as under:

SECTION 45. Restrictions on custody and removal of imported goods. - (1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the [Principal Commissioner of Customs or Commissioner of Customs] until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force, –

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer [or in such manner as may be prescribed].

[(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an [arrival manifest or import manifest] or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.]

read with Section 7(aa) (Appointment of Customs Ports, Airports, etc. – the places which alone shall be inland container depots or air freight stations for the unloading of imported goods and the loading of export goods or any class of such goods) Section 8 (Power to approve landing placed and specify limits of Customs Area).

9. The learned Authorised Representative (AR) for revenue has relied on the following case-laws:

a) Chandrakanth Thakkar Vs. Commr. of Customs, Export-2015 (318) E.L.T. 57 (Bom.)

b) SEC Service Ltd. Vs. CC, Tuticorin-2018 (11) G.S.T.L. 110 (Tri.-Chennai)

10. Heard both sides and perused the records. I find that the appellant, Container Corporation of India was given custodianship under HCCAR, 2009 as a Customs Cargo Service Provider (CCSP). The approval of CCSP is under Regulation 10 of the HCCR 2009, which is given by the jurisdictional Commissioner of Customs on fulfillment of

conditions under Regulation 5, ibid. Further the responsibilities of the CCSP are mentioned at Regulation 6, ibid. I find that the custodianship would have been issued to CCSP i.e. after the satisfaction of all the conditions prescribed in Regulation 5. The CCSP has applied for renewal of the custodianship. In the meantime, as per the directions of CBIC, the Customs has conducted audit of the ICDs and CFSs, the appellant (CCSP) was also audited. On audit, the Customs have noticed discrepancies/short comings/ non adherence in the working of the CCSP and based on that a show-cause was issued and adjudicated by the learned Commissioner. I find that the issues raised by the Customs in the show-cause notice and thereafter adjudicated by the learned Commissioner mostly pertain to the conditions mentioned in Regulation 5. I find that when the custodianship is issued under Regulation 10, the Customs would have ensured that all the conditions mentioned in Regulation 5 are met with by the prospective CCSP i.e., the appellant. Therefore, I find that the issues raised by the Customs on audit of the appellant-custodian pertained to the conditions mentioned in Regulation 5 and the discrepancies were found at the time of renewal could be because of certain new requirements, which should have arisen between the period of issue of custodianship and the application for renewal. The appellant has submitted that they could not attend to the issues raised by the Customs due to shortage of labour during the Covid-19 Pandemic. They have also mentioned in their submissions that they could attend to some of the issues and rest of the issues remaining would be attended to in due course and that there is no willful act on their part not to attend to the issues raised by the Customs. They have also submitted that the issues raised for which they have been

penalized under Regulation 12(8) of HCCAR 2009 are of venial nature and do not merit imposition of penalty. Further, they have contended that imposition of penalty under Section 117 of the Customs Act, 1962 is not sustainable, since they have not violated any of the provisions of the Customs Act, 1962.

11. In this regard, I find that the custodian has operated from the area, which is not notified under Section 8, of the Customs Act, 1962. As regards Section 45, the appellant contends there is no allegation or incident, where there is any unauthorized clearance of goods from the approved premises of the CCSP nor there was any pilferage of goods alleged. Hence, imposition of penalty under Section 117 is not tenable. However, I find that one of the points raised in the audit report of the custodian is with regard to the operations being conducted outside the notified area without any augmentation of notified area and nor there was any request for such amendment from the appellant-custodian. Learned Commissioner has observed that the custodian is operating from an area beyond the notified area without approval from the proper officer as per the inquiry report. In these circumstances, operating from an area which is not notified tantamount to violation of Section 45 read with Section 7 and 8 of the Customs Act, 1962, since storing and clearing of the cargo from such unnotified area would be a violation of provisions of Section 45 of the Customs Act, 1962. Therefore, I find that imposition of penalty under Section 117 is tenable.

12. I find that the discrepancies/non-adherence noticed on audit of the appellant-custodian (CCSP) are found to be non-fulfillment of conditions under Regulation 5(1)(i) (c) (f) (g) (n) and clause (iii) of

Regulation 5 of HCCAR, 2009, hence the penalty imposed under Regulation 12(8) of HCCAR, 2009 is tenable.

13. In view of the above discussion, I find that the penalty imposed on the appellant-custodian (CCSP) is sustainable. However, I find that the quantum of penalties imposed are not appropriate to the discrepancies/non-adherence/contraventions of the provisions of HCCAR, 2009 and Customs Act, 1962 committed by the custodians, hence, I find that the penalties imposed can be considered for reduction.

14. Accordingly, I reduce the penalty of Rs. 50,000/- imposed on the Custodian (CCSP) to Rs. 10,000/- (Rupees Ten Thousand only) under Regulation 12(8) of HCCAR, 2009. Further, the penalty imposed under Section 117 of the Customs Act, 1962 is reduced from Rs. 4,00,000/- to Rs. 25,000/- (Rupees Twenty Five Thousand only).

15. The appeal is disposed in the above terms.

(Order pronounced in Open Court on 09.08.2024)

(Pullela Nageswara Rao)
Member (Technical)

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